



**RCA  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 2  
AGENDA DATE: Thu 06/23/2005  
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**SUBJECT:** Authorize the negotiation and execution of a Memorandum of Agreement (MOA) among the City of Austin, the Texas Commission on Environmental Quality (TCEQ) and the local signatories to the Early Action Compact (EAC) for the implementation of heavy-duty vehicle idling limitation rules.

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING** Austin Energy

**DEPARTMENT:**

**DIRECTOR'S**

**AUTHORIZATION:** Juan Garza

**FOR MORE INFORMATION CONTACT:** Fred Blood, Manager, Air Quality / 482-5340

**PRIOR COUNCIL ACTION:** 970612-38 - Reduce greenhouse emissions in the transportation sector; 011108-37 - Commit to O-3 Flex Plan, for regional ozone reduction; 031204-56 - Approve the Clean Air Action Plan (includes a reduction of vehicle idling).

**BOARD AND COMMISSION ACTION:** N/A

**PURCHASING:** N/A

**MBE / WBE:** N/A

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Limiting heavy-duty vehicle idling is a key component of the region's Early Action Compact (EAC). Signatories to the EAC are Bastrop, Caldwell, Hays, Travis and Williamson Counties and the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock and San Marcos. Stakeholder groups specifically requested this measure as it offers significant emission reductions. All signatories of the Austin-Round Rock EAC committed to the measure.

This MOA is necessary for Austin to prohibit vehicles with a gross vehicle weight of over 14,000 pounds from idling for more than five consecutive minutes during the ozone season, which runs from April 1 through October 31. Parties, such as the City of Austin, enter into this MOA for the purpose of delegating rule (30 TAC Chapter 114, Sections 114.510 – 114.512 and 114.517) enforcement from TCEQ to Local Governments, and to incorporate the emission reductions resulting from the implementation and enforcement of rules into the State Implementation Plan ("SIP").

In Austin, implementation of the idling limitation rule will focus on education of the industry. Enforcement through penalties and contract language is available to underscore the importance of voluntary compliance with the measure. Enforcement will begin April 1, 2006.

To fully implement this rule, the City of Austin must conduct a public hearing and amend a related



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ordinance. In accordance with TCEQ timeline requirements, such actions will be brought to Council by early August.

## **MEMORANDUM OF AGREEMENT**

### **I. Parties**

This Memorandum of Agreement ("MOA") is entered into between the Texas Commission on Environmental Quality ("TCEQ") and the local governments signing this agreement (Local Governments), collectively the "Parties."

1. The Parties represent that they have the authority to enter into this MOA, including the authority granted in the Texas Government Code Chapter 791 Interlocal Cooperation Contracts.

2. The TCEQ has authority under Section 5.229 of the Texas Water Code and Section 382.033 of the Texas Health and Safety Code to enter into this MOA.

3. The Local Governments have authority under Section 382.115 of the Texas Health and Safety Code to enter into this MOA.

### **II. Intent and Purpose**

The intent of this MOA is to memorialize the agreement between the Parties to implement the following rules aimed at the control of air pollution from motor vehicles: 30 Texas Administrative Code ("TAC") Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter J, Operation Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, Sections 114.510 - 114.512 and 114.517.

The Parties enter into this MOA for the purpose of delegating rule enforcement from TCEQ to Local Governments and incorporating the emission reductions resulting from the implementation and enforcement of the above-referenced rules into the State Implementation Plan ("SIP").

### **III. Definitions**

As used in this MOA the following terms have the meanings given below:

1. "EPA" shall mean the U.S. Environmental Protection Agency.
2. "TCEQ" shall mean the Texas Commission on Environmental Quality.
3. "Local Government" has the meaning assigned by 30 TAC Section 114.510.

4. "EAC" means Early Action Compact.
5. "Local EAC Signatories" means the Local Governments that are signatories to the Austin San Marcos MSA (subsequently designated the Austin Round Rock MSA) EAC Memorandum of Agreement with TCEQ and EPA, signed December 18, 2002. These Local Governments are Bastrop, Caldwell, Hays, Travis and Williamson Counties and the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock and San Marcos.
6. "SIP" shall refer to the Texas State Implementation Plan.

#### **IV. Background**

1. Under Section 110 of the Federal Clean Air Act ("FCAA"), 42 U.S.C. § 7410, each state that has a non-attainment area must submit a SIP to the EPA demonstrating strategies to come into compliance with the National Ambient Air Quality Standards ("NAAQS").

2. Section 110 of the FCAA, 42 U.S.C. § 7410 also requires Texas to submit to the EPA for approval any SIP revisions and to demonstrate that such SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the FCAA, as required by § 110(1) of the FCAA.

3. On June 19, 2002 the EPA approved the *Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standard*, a guidance document developed in coordination with TCEQ that addresses EAC development, implementation and commitments of signatory parties. The EAC concerns attainment of the national 8-hour ozone standard. Early voluntary 8-hour air quality plans can be developed through a Compact between Local, State, and the EPA officials for areas that are in attainment of the 1-hour ozone standard but approach or monitor exceedances of the 8-hour standard. Early action plans are incorporated into the SIP.

4. On December 18, 2002, the TCEQ, the EPA, and the Local EAC Signatories entered into the Austin-San Marcos MSA Early Action Compact.

5. On March 29, 2004 the Local EAC Signatories submitted an 8-hour air quality plan to TCEQ and EPA in accordance with the EPA EAC Protocol. The plan contains commitments for numerous locally implemented emission reduction measures as well as several state-assisted measures, including the state heavy duty vehicle idling restrictions, to be implemented and enforced locally.

6. On November 17, 2004, the TCEQ adopted rules concerning locally enforced motor

vehicle idling limitations, which are applicable only within the jurisdiction of a Local Government that has signed a Memorandum of Agreement with TCEQ delegating enforcement of the rules. The TCEQ submitted the rules to EPA for approval on December 6, 2004. EPA approved the rules in the Federal Register on April 11, 2005. The rules are effective June 10, 2005.

7. On November 17, 2004, the TCEQ also incorporated most of the Austin-Round Rock MSA EAC Clean Air Action Plan into the SIP. The State submitted the SIP to EPA for approval on December 6, 2004. EPA approval makes the plan's emission reduction measure commitments state and federally enforceable.

8. Parties acknowledge that they have entered into this MOA voluntarily and it shall become binding upon the signature of the Executive Director of TCEQ or his designated representative. In order to comply with the Austin-Round Rock MSA EAC and SIP commitments and safeguard the air resources of the State of Texas, the Parties agree to comply with the terms of this MOA.

9. The Local Governments understand and agree that the commitments in this MOA become federally enforceable by the EPA, and by persons using the citizen suits provision of the Federal Clean Air Act (42 U.S.C.A. § 7604), upon approval of this MOA into the SIP.

## **V. Obligations of Parties**

(A) Local Governments agree as follows:

1. In accordance with the terms of this MOA but subject to subsection (b) below, the Local Governments agree to implement the following TCEQ Rules as stated in the Austin-Round Rock MSA *Implementation Plan for the Texas Heavy-Duty Vehicle Idling Rule* by December 31, 2005:
  - a. 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter J, Operation Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, Sections 114.510 - 114.512 and 114.517.
  - b. The following Local Governments do not adopt the rules for criminal enforcement purposes under section 7.177 of the Texas Water Code:
    - i. \_\_\_\_\_
2. The Local Governments agree to submit the following information to the TCEQ for the rules listed above not later than forty-five (45) calendar days after the effective date of this MOA.

- a. Detailed description of the plan for implementation of these rules
  - b. Copies of local ordinances or resolutions adopted by each Local Government to implement these rules
  - c. Copies of agreements entered between any Local Government and other units of Local Government for the purpose of the implementation of these rules.
  - d. Submission of agreements entered between any Local Government and other units of Local Government for the purpose of the implementation of these rules will be accepted after forty-five (45) calendar days of the commencement of the MOA with the understanding that revisions to the SIP may not be available for agreements submitted after this period.
3. Copies of any requisite resolutions under Section 7.352 of the Texas Water Code shall be submitted to the TCEQ within fourteen (14) calendar days after passage by the local governing body.
- (B) The TCEQ agrees to submit this agreement to the U.S. EPA as a technical support document to the Austin-Round Rock MSA EAC SIP revision.

## **VI. Term and Termination**

This MOA will become effective upon signature by all Parties and shall expire on January 2, 2008, unless renewed in writing by mutual agreement of all remaining Parties. A Party may withdraw from this Agreement at any time upon thirty days written notice to all other Parties to this agreement. Withdrawal by a Local Government does not constitute termination of the entire MOA. This MOA may be terminated at any time by mutual written consent of the Parties.

## **VII. Miscellaneous**

This MOA represents the entire agreement between the TCEQ and the Local Governments and supersedes all other agreements, understandings or commitments, written or oral, relative to the intent of this MOA. This MOA may not be amended or modified except pursuant to a mutual written agreement executed by each of the Parties.

This MOA shall be governed by and interpreted in accordance with the laws of the State of Texas.

In Witness Whereof, Texas Commission on Environmental Quality and the Local Governments , by their authorized officers, have made and executed this MOA in multiple copies, each of which is deemed an original.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

By: \_\_\_\_\_

Name: Glenn Shankle

Title: Executive Director

\_\_\_\_\_  
Date

Bastrop County

By: \_\_\_\_\_

Name: *[name of designated signer]*

Title: *[title of designated signer]*

\_\_\_\_\_  
Date

Caldwell County

By: \_\_\_\_\_

Name: *[name of designated signer]*

Title: *[title of designated signer]*

\_\_\_\_\_  
Date

Hays County

By: \_\_\_\_\_

Name: *[name of designated signer]*

Title: *[title of designated signer]*

\_\_\_\_\_  
Date

Travis County

By: \_\_\_\_\_

Name: *[name of designated signer]*

Title: *[title of designated signer]*

\_\_\_\_\_  
Date

Williamson County

By: \_\_\_\_\_

Name: *[name of designated signer]*

Title: *[title of designated signer]*

\_\_\_\_\_  
Date

City of Austin

By: \_\_\_\_\_

\_\_\_\_\_

Name: *[name of designated signer]*  
Title: *[title of designated signer]*

Date

City of Bastrop

By: \_\_\_\_\_  
Name: *[name of designated signer]*  
Title: *[title of designated signer]*

\_\_\_\_\_  
Date

City of Elgin

By: \_\_\_\_\_  
Name: *[name of designated signer]*  
Title: *[title of designated signer]*

\_\_\_\_\_  
Date

City of Lockhart

By: \_\_\_\_\_  
Name: *[name of designated signer]*  
Title: *[title of designated signer]*

\_\_\_\_\_  
Date

City of Luling

By: \_\_\_\_\_  
Name: *[name of designated signer]*  
Title: *[title of designated signer]*

\_\_\_\_\_  
Date

City of Round Rock

By: \_\_\_\_\_  
Name: *[name of designated signer]*  
Title: *[title of designated signer]*

\_\_\_\_\_  
Date

City of San Marcos

By: \_\_\_\_\_  
Name: *[name of designated signer]*  
Title: *[title of designated signer]*

\_\_\_\_\_  
Date



# **IMPLEMENTATION PLAN FOR THE TEXAS HEAVY-DUTY VEHICLE IDLING RULE**

**June 8, 2005**

## **Background**

Limiting heavy-duty vehicle idling is one component of the region's Early Action Compact (EAC). It offers emission reductions and stakeholder groups specifically requested it. All signatories of the Austin-Round Rock EAC committed to the measure.

The locally enforced motor vehicle idling limitation rules (30 TAC Chapter 114, Sections 114.510 – 114.512 and 114.517) prohibit vehicles with a gross vehicle weight of over 14,000 pounds from idling for more than five consecutive minutes during the ozone season, which runs from April 1 through October 31. Exceptions are provided in Section 114.517. The rule is applicable only within the jurisdiction of a local government that has signed a Memorandum of Agreement (MOA) with TCEQ to delegate enforcement of the rules to that local government

Implementation will begin no later than 30 days after the date of TCEQ approval of the implementation plan. Implementation will largely be education-based. Enforcement through penalties and contract language is available to underscore the importance of voluntary compliance with the measure. Enforcement will begin April 1, 2006.

Exhibit A contains the implementation timeline and further detail. Please note that definitions used in the MOA remain the same for the implementation plan.

## **Education & Information:**

- Publish and distribute fact sheet and educational brochures that include reasons for the idling limitations, the specifics of the limitations and information on available anti-idling technologies
- Promote installation of signage on roadways and/or in likely idling locations to notify drivers of affected vehicles about the area's anti-idling regulations. Signs will be available for purchase at cost.
- Establish informational hotline (both telephone and online)
- Include fact sheet, educational brochure and other anti-idling information on the websites of participating jurisdictions and supporting agencies

- Send mailings to area businesses, school districts and industry associations, targeting those most likely to be affected
- Track and report implementation and estimated emission reductions in conjunction with the EAC semi-annual report submitted to TCEQ and EPA per EAC requirements.

**Enforcement:**

- Local governments will use enforcement procedures that are consistent with section 7.351 of the Texas Water Code or any applicable local government ordinances.
- Local governments may use their own complaint resolution and investigative processes or enter into an interlocal cooperation agreement with another local government for complaint resolution and investigative services.
- Local peace officer enforcement training programs will be updated with information on regulatory requirements and compliance determination procedures.
- Local governments may use contract language to ensure that their operations are compliant.
- Members of the public can report suspected idling violations to local governments directly.
- Local EAC signatories and enforcement personnel will track and report violations semi-annually as part of the region's EAC semi-annual report. This allows both a determination of rule effectiveness and adequate follow-up for noncompliant sources.

**EXHIBIT A**

## **Implementation Plan – Phase 1 Through October 31, 2005**

### **Phase 1 is the Initial public and stakeholder information campaign**

Phase 1 will be conducted by local EAC signatories, the EAC Task Force, CLEAN AIR Force, Clean Air Partners, Clean Cities and other interested parties.

### **Phase 1 Activities**

Local EAC signatories adopt resolutions authorizing/approving MOA and implementation plan. If the local government will be enforcing under section 7.351 of the Texas Water Code, it must also adopt a resolution consistent with section 7.352 of the Texas Water Code. This will allow the local government to exercise the enforcement power authorized by Chapter 7, Subchapter H of the Texas Water Code.

Press conference - MOA signing ceremony and implementation plan kick-off (announce hot-lines and information sites, anti-idling sign promotion and information)

CLEAN Air Force and/or CAPCOG activates telephone and web hot-line

Local EAC signatories may also activate hotlines

Informational brochures distributed to Phase 1 parties and high-idle locations

Web-site materials distributed to Phase 1 parties

The City of Austin will make idling restriction sign design available at no charge and signs at cost to requesting parties

CAPCOG and local governments develop training materials for enforcement training programs

Local EAC signatories respond to complaints with an informational warning

## **Implementation Plan - Phase 2 November 1, 2005 through October 31, 2007**

**Phase 2 distinguishes between activities applicable April 1 – October 31, when idling restrictions are in place, and the activities that continue from November 1 – March 31 when Idling restrictions are not applicable, per 30 TAC Chapter 114.**

### **Phase 2 Activities**

**Nov 1, 2005 to March 31, 2006 (Information only)**

Activities in this time period include continuing the outreach begun in Phase 1 and adding additional outreach activities. Activities will be conducted by local EAC signatories, the EAC Task Force, CLEAN AIR Force, Clean Air Partners, Clean Cities and other interested parties. Additional activities for off-season

2005/2006 include:

- CAPCOG and local governments include idling restriction information in its enforcement training classes
- The CLEAN AIR Force will provide public service and paid media announcements geared toward the 2006 ozone season.
- The EAC Task Force and/or the CLEAN AIR Force sends targeted mailouts to businesses and other entities that are expected to have incidences of extended idling

**April 1, 2006 to October 31, 2006 (information and enforcement)**

Activities in this time period will be conducted by local EAC signatories, the EAC Task Force, CLEAN AIR Force, Clean Air Partners, Clean Cities and other interested parties. These activities include:

- Begin enforcement in accordance with the enforcement section of this document
- Continue hotline operation, brochure distribution, website information, public service and paid media announcements, idling restriction sign availability, and enforcement training.

**Nov 1, 2006 to March 31, 2007 (Information only)**

Activities in this time period will be conducted by local EAC signatories, the EAC Task Force, CLEAN AIR Force, Clean Air Partners, Clean Cities and other interested parties. These activities include:

- Continue hotline operation, brochure distribution, website information, idling restriction sign availability, and enforcement training.

**April 1, 2007 to October 31, 2007 (information and enforcement)**

Activities in this time period will be conducted by local EAC signatories, the EAC Task Force, CLEAN AIR Force, Clean Air Partners, Clean Cities and other interested parties. These activities include:

- Continue enforcement in accordance with the enforcement section of this document
- Continue hotline operation, brochure distribution, website information, public service and paid media announcements, idling restriction sign availability, and enforcement training.

**Implementation Plan – Phase 3**

**September 1, 2007 through at least December 31, 2007**

The MOA expires on January 2, 2008, although it may be renewed in writing by mutual agreement of all parties. Phase 3 allows time to evaluate the program, to consider changes and, if the parties are in agreement, to renew the MOA.

**Enforcement:**

Beginning in April 2006 the driver and/or owner of a heavy-duty vehicle determined by a local government to be operating in violation of Rule 114.512 may be issued a Notice of Violation (NOV) describing the activity that caused the violation and noting specific circumstances regarding location, date and identification of the truck and driver. The NOV will also include a request that the driver/owner respond to the NOV within 20 days of issuance or as specified by any applicable local government ordinance describing corrective action to be taken to prevent recurrence.

In the case of repeated, uncorrected violations of the rules, the local government may issue a Notice of Enforcement (NOE) to the violating entity describing enforcement action to be taken. The local government may then institute an action, as authorized under Section 7.351 of the Water Code or any applicable local government ordinances, pursuing injunctive relief and/or civil penalties against the person who committed the violations. Recommended penalties sought in civil action would be consistent with Subchapter D of the Texas Water Code. Each day a violation occurs is considered a separate violation.